

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF PUERTO RICO

3 UNITED STATES OF AMERICA,

4 Plaintiff,

5 v.

6 [44] JUAN C. TORRENCH-RODRIGUEZ,
7 a.k.a., "Juanca", "Juan C. Torrench-Garcia",

8 Defendant.

9 CRIMINAL NO. 12-414 (DRD)

10 MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION
11 RE: RULE 11 PROCEEDINGS (PLEA OF GUILTY)

12 **I. Procedural Background**

13 On May 24, 2012, a grand jury returned an indictment against [44] Juan C. Torrench-
14 Rodriguez¹, (hereinafter referred to as "defendant") and other individuals. ECF No. 3. The defendant
15 has agreed to plead guilty to counts one and six of the indictment. Count one charges that beginning
16 on a date unknown, but no later than in or about the year 2004, and continuing up to and until the return
17 of the instant indictment, in the Municipality of Carolina, District of Puerto Rico and within the
18 jurisdiction of this court, defendant [44] Juan C. Torrench-Rodriguez and other persons did knowingly
19 and intentionally, combine, conspire, and agree with each other and with diverse other persons known
20 and unknown to the grand jury, to commit an offense against the United States, that is, to knowingly
21 and intentionally possess with intent to distribute and/or to distribute controlled substances, to wit: in
22 excess of two hundred and eighty (280) grams of cocaine base (crack), a Schedule II Narcotic Drug
23 Controlled Substance; in excess of one (1) kilogram of heroin, a Schedule I, Narcotic Drug Controlled
24 Substance; in excess of five (5) kilograms of cocaine, a Schedule II, Narcotic Drug Controlled
25 Substance; in excess of one hundred (100) kilograms of marijuana, a Schedule I, Controlled Substance;
26 within one thousand (1,000) feet of the real property comprising housing facilities owned by a public

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28 ¹ During the change of plea hearing, defendant advised that his true name is Juan C. Torrech-García.

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2 housing authority, to wit: El Coral, Lagos de Blasina and El Faro Public Housing Projects, all in
3 violation of Title 21, United States Code, §§ 841(a)(1), 846 and 860.

4 Count six charges that beginning on a date unknown, but no later than in or about the year 2004,
5 and continuing up to and until the return of the instant indictment, in the Municipality of Carolina,
6 District of Puerto Rico and within the jurisdiction of this court, defendant [44] Juan C. Torrench-
7 Rodriguez, along with other persons, aiding and abetting each other, did knowingly and unlawfully use
8 and carry firearms as that term is defined in Title 18 United States Code, Section 921(a)(3), during and
9 in relation to a drug trafficking crime as charged in count one (1) of the instant indictment, all in
10 violation of Title 18, United States Code, § 924(c)(1)(A).

11 **II. Consent to Proceed Before a Magistrate Judge**

12 On August 5, 2013, the defendant, by consent, appeared before the undersigned in order to
13 change his previous not guilty plea to a plea of guilty as to counts one and six of the indictment. In
14 open court the defendant was questioned as to the purpose of the hearing being held and was advised
15 of: (a) the nature and purpose of the hearing; (b) the fact that all inquiries were to be conducted under
16 oath and that it was expected that his answers would be truthful; (c) the potential consequences of lying
17 under oath (such as a perjury charge); and (d) his right to have the change of plea proceedings presided
18 by a district judge instead of a magistrate judge. The defendant was also explained the differences
19 between the appointment and functions of the two. The defendant consented to proceed before the
20 undersigned magistrate judge.

21 **III. Proceedings Under Rule 11, Federal Rules of Criminal Procedure**

22 **A. Rule 11(c)(1) Requirements**

23 Rule 11 of the Federal Rules of Criminal Procedure governs the acceptance of
24 guilty pleas to federal criminal violations. Pursuant to Rule 11, in order for a plea of
25 guilty to constitute a valid waiver of the defendant's right to trial, guilty pleas must be
26 knowing and voluntary: "Rule 11 was intended to ensure that a defendant who pleads
27 guilty does so with an 'understanding of the nature of the charge and consequences of
28 his plea.'" United States v. Cotal-Crespo, 47 F.3d 1, 4 (1st Cir. 1995) (quoting
McCarthy v. United States, 394 U.S. 459, 467 (1969)). [There are three core concerns
in these proceedings]: 1) absence of coercion; 2) understanding of the charges; and 3)
knowledge of the consequences of the guilty plea. United States v. Cotal-Crespo, 47
F.3d at 4 (citing United States v. Allard, 926 F.2d 1237, 1244-45 (1st Cir. 1991)).

² United States v. Hernández-Wilson, 186 F.3d 1, 5 (1st Cir. 1999).

B. Admonishment of Constitutional Rights

To assure defendant's understanding and awareness of his rights, defendant was advised of his right:

1. To remain silent at trial and be presumed innocent, since it is the government who has the burden of proving him guilty beyond a reasonable doubt.
 2. To testify or not to testify at trial, and that no adverse inference could be made in relation to his decision not to testify.
 3. To a speedy trial before a district judge and a jury, at which he would be entitled to see and cross examine the government witnesses, present evidence on his behalf, and challenge the government's evidence.
 4. To have a unanimous verdict rendered by a jury of twelve persons which would have to be convinced of defendant's guilt beyond a reasonable doubt by means of admissible evidence.

Upon listening to the defendant's responses, observing his demeanor and his speaking with his attorney, that to the best of counsel's belief defendant had fully understood his rights, it is determined that defendant is aware of his constitutional rights.

C. Consequences of Pleading Guilty

Upon advising defendant of his constitutional rights, he was further advised of the consequences of pleading guilty. Specifically, defendant was advised that by pleading guilty and upon having his guilty plea accepted by the court, he will be giving up the above rights and will be convicted solely on his statement that he is guilty.

Furthermore, the defendant was admonished of the fact that by pleading guilty he would not be allowed later on to withdraw his plea because he eventually might disagree with the sentence imposed, and that if he violates the conditions of supervised release, that privilege could be revoked and he could be required to serve an additional term of imprisonment. He was also explained that parole has been abolished.

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In response to further questioning, defendant was explained and he understood that if convicted on count one as charged, he will face the following maximum penalties: a term of imprisonment which shall not be less than ten (10) years and up to two (2) terms of life, a fine not to exceed twenty million dollars (\$20,000,000), and a term of supervised release of not less than ten (10) years in addition to any term of incarceration, pursuant to Title 21, United States Code, §§ 841(b)(1)(A), 846 and 860. The defendant, however, was also explained that if the court accepts his guilty plea and if the court accepts the drug quantity amount stipulated by the parties, that is, at least one hundred (100) grams but less than two hundred (200) grams of cocaine, the defendant faces a minimum sentence of one (1) year of imprisonment and a maximum term of imprisonment of forty (40) years, a fine not to exceed two million dollars (\$2,000,000), and a term of supervised release of not less than six (6) years in addition to any term of incarceration, pursuant to Title 21, United States Code, §§ 841(b)(1)(B), 846 and 860.

Defendant was explained and he understood that if convicted on count six, he will face the following maximum penalties: a term of imprisonment of not less than five (5) years and up to life imprisonment, to be served consecutively from any other count of conviction; a fine not to exceed two hundred fifty thousand dollars (\$250,000.00), and a term of supervised release of up to five (5) years, all in violation of Title 18, United States Code, § 924(c)(1)(A)(i). Defendant was also made aware that the court must impose a mandatory penalty assessment of one hundred dollars (\$100) per offense pursuant Title 18, United States Code, Section 3013(a).

The defendant was advised that the ultimate sentence was a matter solely for the court to decide in its discretion and that, even if the maximum imprisonment term and fine were to be imposed upon him, he later could not withdraw his guilty plea for that reason alone. The defendant understood this.

The defendant acknowledged that at this stage no guarantees or promises as to the sentence to be imposed had been made to him. The defendant was also explained what the supervised release term means and was urged to cooperate with the United States Probation Office.

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D. Plea Agreement²

3 The parties have entered into a written plea agreement that, upon being signed by the
4 government, defense attorney and defendant, was filed and made part of the record. Defendant was
5 clearly warned and recognized having understood that:

6 1. The plea agreement is not binding upon the sentencing court.

7 2. The plea agreement is an agreement between the defendant, defense counsel and the attorney
8 for the government which is presented as a recommendation to the court in regards to the applicable
9 sentencing adjustments and guidelines, which are advisory.

10 3. The agreement provides a sentencing recommendation and/or anticipated sentencing
11 guideline computation, that can be either accepted or rejected by the sentencing court.

12 4. In spite of the plea agreement and any sentencing recommendation contained therein, the
13 sentencing court retains full discretion to reject such plea agreement and impose any sentence up to the
14 maximum possible penalty prescribed by statute.

15 Defendant acknowledged having understood this explanation as well as all the terms and
16 conditions of the plea agreement.

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E. Government's Evidence (Basis in Fact)

18 The government presented a proffer of its evidence consistent with the version of facts of the plea
19 agreement with which the defendant concurred. Accordingly, it is determined that there is a basis in fact
20 and evidence to establish all the elements of the offense charged.

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F. Voluntariness

22 The defendant accepted that no threats had been made to induce him to plead guilty and that he
23 did not feel pressured to plead guilty.

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² "Plea agreement" refers to the agreement and its supplement, if any supplement was actually filed by the
parties.

G. Waiver of Appeal

3 The defendant was explained, and he understood, that if the court accepts the plea agreement and
4 sentences him according to its terms and conditions, he will be surrendering his right to appeal the
5 sentence and judgment in this case.

IV. Conclusion

7 The defendant, by consent, has appeared before me pursuant to Rule 11, Federal Rules of
8 Criminal Procedure, and has entered a plea of guilty as to counts one and six of the indictment. After
9 cautioning and examining the defendant under oath and in open court, concerning each of the subject
10 matters mentioned in Rule 11, as described in the preceding sections, I find that defendant is competent
11 to enter this guilty plea, is aware of the nature of the offenses charged and the maximum statutory
12 penalties that the same carry, understands that the charges are supported by the government's evidence,
13 has admitted to every element of the offenses charged, and has done so in an intelligent and voluntary
14 manner with full knowledge of the consequences of his guilty plea. Therefore, I recommend that the
15 court accept the guilty plea of the defendant and that the defendant be adjudged guilty as to counts one
16 and six of the indictment.

17 This report and recommendation is filed pursuant to 28 U.S.C. § 636(b)(1)(B) and Rule 72(d)
18 of the Local Rules of Court. Any objections to the same must be specific and must be filed with the
19 Clerk of Court within fourteen (14) days of its receipt. Rule 72(d), Local Rules of Court; Fed. R. Civ.
20 P. 72(b). Failure to timely file specific objections to the report and recommendation is a waiver of the
21 right to review by the district court. United States v. Valencia-Copete, 792 F.2d 4 (1st Cir. 1986).

22 SO RECOMMENDED.

23 In San Juan, Puerto Rico, this 12th day of August, 2013.

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25 s/Marcos E. López
U.S. MAGISTRATE JUDGE
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